

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patentee: Mark C. Nicely, et al.
Patent No.: 7,867,080
Issued: January 11, 2011
Appl. No.: 10/668,670
Conf. No.: 1055
Filed: September 22, 2003
Title: INTERACTIVE STREAK GAME
Art Unit: 3714
Examiner: Mark Alan Sager
Docket No.: 3718611-03588

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(d)**

Sir:

Patentee hereby petitions for reconsideration of the Patent Term Adjustment accorded the above-referenced application at the time of issuance. The Issue Notification and Determination of Patent Term Adjustment under 35 U.S.C. 154(b), mailed on December 22, 2010, states that the Total PTA is 889 days. That is, Non-Overlapping USPTO Delay days of 1235 and APPL Delay days of 346. The APPL Delay days of 346 appear to be overstated, resulting in the Total PTA being shorter than appropriate on the issue date of January 11, 2011.

Patentee respectfully requests a review of the prosecution file history, with attention to the following entries: (1) the January 22, 2008, entry of Information Disclosure Statement (IDS) Filed, in conjunction with the January 14, 2008, entry of Request for Continued Examination (RCE) and the September 14, 2007, entry of Mail

Final Rejection (PTOL - 326); and (2) the June 9, 2010, entry of Miscellaneous Incoming Letter.

STATEMENT OF FACTS

The PTA History reflects that the USPTO received an Information Disclosure Statement (without certificate) on January 22, 2008, following the Request for Continued Examination filed on January 14, 2008, in response to the Final Rejection mailed September 14, 2007. The IDS is considered a Supplemental Response, and, therefore, a PTA reduction due to Patentee's delay pursuant to 35 U.S.C. § 154(b)(2)(C)(i).

The Patent Term Adjustment accorded the above-referenced application at the time of issuance appears not to have increased the APPL Delay days by 8 days to reflect the 8 days between the filing of the RCE on January 14, 2008, and the filing of the IDS on January 22, 2008.

On June 9, 2010, the USPTO received the Patentee's Letter Regarding Patent Term Adjustment at Allowance Pursuant to Comment 43 of the Final Rule. The Letter brought the above-referenced error to the attention of the USPTO. However, that Letter was entered as a "Miscellaneous Incoming Letter," and does not appear to have been substantively reviewed. This erroneous entry resulted in an APPL Delay of 120 days.

The instant patent is not subject to any Terminal Disclaimers.

REMARKS

In consideration of the events described above, Patentee believes the Total PTA calculation of 889 days is understated as of the issuance date. Patentee respectfully requests reconsideration of the patent term adjustment in the following manner.

- (1) Non-Overlapping USPTO Delay days correctly calculated at 1235 days.
- (2) APPL Delay days be corrected to reflect:

(a) a removal of the 120 APPL Delay days erroneously associated with Patentee's Letter Regarding Patent Term Adjustment at Allowance Pursuant to Comment 43 of the Final Rule, which was filed on June 9, 2010; and

(b) an increase of 8 APPL Delay days associated with the time period between the filing of the RCE (filed on January 14, 2008) and the filing of the IDS (filed on January 22, 2008);

thereby decreasing the APPL Delay days from 346 to 234 days.

3) Total PTA days be increased from 889 days to 1001 days (1235 Non-Overlapping USPTO Delay days–234 APPL Delay days).

Pursuant to 37 CFR § 1.18(e), the fee of \$200 is submitted herewith. To the extent that any additional fees are due for this Petition, the Commissioner is hereby authorized to charge them to Patentee's undersigned attorney's Deposit Account, 02-1818.

Thank you for your consideration.

Respectfully submitted,

K&L Gates LLP

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Dated: March 10, 2011